

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 MICHAEL PHILLIPS on . Civil Action
5 Behalf of Himself and . No. 10-2422
6 Others Similarly .
7 Situated, .

8 VS.
9 .

10 ENGlobal Corporation . FEBRUARY 7, 2011
11 3:35 P.M.
12 HOUSTON, TEXAS

13 TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE LYNN N. HUGHES
15 UNITED STATES DISTRICT JUDGE

16 APPEARANCES:

17 FOR PLAINTIFF:

18 MR. RICHARD J. BURCH
19 Bruckner Burch PLLC
20 1415 Louisiana Street
21 Suite 2125
22 Houston, Texas 77002

23 FOR DEFENDANT:

24 MR. WILLIAM J. WISDOM
25 MR. JAMES CLEARY
Martin Disiere, et al.
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26 Proceedings recorded by mechanical stenography, transcript
27 produced by computer-aided transcription.

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P R O C E E D I N G S

(February 7, 2011)

(In chambers)

THE COURT: Where are we, Mr. Burch?

03:35:12PM

MR. BURCH: We have had about 220 people join. We are comparing notes to make sure that we have got everybody in that should be in. We've had a guy or two who's expressed cold feet after they joined up. So, we are getting that worked out. They have given me about 178 of them's payroll records so that we can start crunching the numbers.

03:35:29PM

One thing that we've --

THE COURT: How many did you say you've got?

MR. BURCH: About 220.

THE COURT: Is that large enough to do a random sample? To come up with a reliable number?

03:35:39PM

MR. BURCH: It probably is. I think once you get above 50, you can start doing some stuff; and once you get above a hundred --

THE COURT: You have to have a sample of 20 out of 50.

03:35:51PM

MR. BURCH: Right. But --

THE COURT: But, still, rather than do 220, it might be useful to figure out how many it would take.

Well, how many people fit the employment description total? Not who have applied to join the class.

03:36:08PM

1 MR. BURCH: About 1800.

2 MR. WISDOM: Yeah.

3 THE COURT: About 1800.

4 MR. WISDOM: Almost 2,000.

03:36:18PM 5 THE COURT: But the random sample from the 1800 -- I
6 don't know. Do you know anything about math?

7 MR. CLEARY: I went to law school, Your Honor.

8 THE COURT: Although I had some guy the other day
9 who was very quiet. Every once in a while he would say
03:36:37PM 10 something about mechanics and the answer. It turned out he
11 got an engineering degree at West Point and still went to law
12 school. Apparently, when he signed up for the army, he didn't
13 realize the foreigners got to shoot back.

14 Talk about it. But let's find out how many
03:37:06PM 15 would be -- 90 percent -- 90, 95 percent compensation for the
16 whole 1800 because it is not how these people were paid and
17 what they did. It's how they were paid. Now, these people
18 who recover have to be aberrational. Or it may be you just
19 want to see what the people who want to be in the suit did.

03:37:37PM 20 MR. BURCH: I think given the way that they've kept
21 the data, it's not that hard for us to come up with a pretty
22 good run on the 220 people that are in it. That's not always
23 true. But for these folks, it is just getting them put into
24 an Excel spreadsheet; and then Excel can tell us the answer, I
03:37:53PM 25 think.

1 MR. WISDOM: I think that's the better way to go.
2 There are several variables. Some of these guys simply have a
3 cup of coffee with the company. There's a few of those that
4 are in. Some of the guys work for us every day. So, I think
03:38:03PM 5 we can actually get to -- get the math done.

6 THE COURT: I got a claim once that said -- somebody
7 fill this out and mailed it in, and it said: I'm not covered
8 by your class; but if you are giving away money, I'm in.

9 MR. WISDOM: Well, hopefully, we will have a few of
03:38:24PM 10 those, too.

11 THE COURT: And then what do you want to do after
12 you massage the data and find out what the profile looks like?

13 MR. BURCH: One thing that we would like to do on a
14 sort of short-term basis is there's still the website up there
03:38:44PM 15 telling folks that, you know, hey come join this case if you
16 would like to. We would like to modify it some. It is your
17 website, not ours. So, what we'd like to do is --

18 THE COURT: If y'all can agree on it.

19 MR. BURCH: Right.

03:38:59PM 20 THE COURT: Hereinafter referred to as, quote, you
21 know, stuff like that.

22 MR. BURCH: And then I think the next logical step
23 for us is to just sit down and see if there's a number that we
24 can -- everybody can live with. I mean, this case is not that
03:39:15PM 25 hard, to me.

1 THE COURT: A dollar number?

2 MR. BURCH: Correct. I'm sorry.

3 MR. WISDOM: That's -- that's where we see this
4 going, Judge.

03:39:24PM 5 THE COURT: Why don't you just go settle it.

6 So, now we are just talking about what a
7 reasonable, average, would be to compensate people. That's a
8 lot easier than how they were working and what they were doing
9 and all of that stuff.

03:39:42PM 10 MR. BURCH: Right.

11 MR. WISDOM: Right. We -- this case could have gone
12 down another road with 42 depositions and all kinds of hemming
13 and hawing about the duties of -- we have tried to take a
14 pragmatic approach; and to the extent I can keep my client
03:40:00PM 15 tracking with this philosophy, I think we can get this wrapped
16 up.

17 THE COURT: Okay. And I may have said this, and
18 forgive me if it's the second time. But the best outcome in
19 this suit can be that you counsel him through adopting a
03:40:12PM 20 reliable electronic time and attendance system so that
21 whatever -- even if he is paying them \$400,000 a year and
22 later they claim they were an hourly worker, you have got the
23 data from when they worked and liberally say: If you work
24 through lunch, don't put down you were out for an hour lunch.

03:40:38PM 25 The most common thing is: My supervisor told

1 me to just always put down 40 hours. That is said sometimes
2 when they didn't always put down 40 hours.

3 MR. WISDOM: The challenge with this, endemic to the
4 industry, these guys are really on their own, on the road, and
03:40:57PM 5 being able to --

6 THE COURT: Unsupervised.

7 MR. WISDOM: -- being able to track -- track time
8 and document time with a high confidence level -- there are --
9 there are ways to do it, but none of them are easy or fool
03:41:08PM 10 proof. But you've got to have that direction.

11 THE COURT: Are there issued company computers?

12 MR. WISDOM: I don't think everybody gets a company
13 laptop. I think the communication lines are a lot more ad
14 hoc.

03:41:22PM 15 MR. BURCH: They're required to have a computer, and
16 they will either be provided it by the company or they'll have
17 their own. And if they have their own, the company pays them
18 three bucks a day or five bucks a day for the use of their
19 computer.

03:41:38PM 20 THE COURT: Okay. Well, I am not good enough with
21 the modern systems. You can require them, if they have their
22 own laptop, to log in to the company computer and log out when
23 they take -- because even if you have a time clock in the shop
24 and everybody is there, you can't -- all you can do is fire
03:41:58PM 25 them if they don't -- if you catch them not logging in and

1 logging out like they are supposed to.

2 Anything else we can usefully do?

3 MR. BURCH: I think maybe set another day for us to
4 come back and see you just so that we keep things moving, but
03:42:14PM 5 beyond that --

6 THE COURT: How about a month so you can tell me
7 what you've come up with as a statistical test.

8 MR. BURCH: Great.

9 THE COURT: I will, of course, check the math. I
03:42:24PM 10 have a book on statistics. I know just enough about it to
11 know how to look it up.

12 MR. WISDOM: Are those well-worn pages?

13 THE COURT: Actually, the shame of it is it is not
14 often enough that I don't have to look it up every time; but
03:42:39PM 15 it is often enough I don't forget it entirely.

16 I actually, about '89 or so, took a course in
17 statistics. So -- I just went off and took one. It helps
18 because it is everywhere.

19 Yes, Bob, this is the first home game in
03:43:08PM 20 September where the third pitcher has swung more than twice
21 without -- with computers, they have got every statistic in
22 the world. You know, the little guys keeping all the
23 statistics are no longer there; but they can call back first
24 post season, home -- none of which makes any difference.

03:43:29PM 25 Isn't the ultimate thing the score at the end? They all start

1 out tied. More often than not somebody wins.

2 MR. CLEARY: You have taken all the fun out of it,
3 Your Honor.

4 THE COURT: Apparently. Okay.

03:43:52PM 5 (Discussion held off the record.)

6 THE COURT: All right. When did I say, two weeks,
7 to report?

8 MR. BURCH: I think you said a month, Your Honor.

9 MR. WISDOM: But two weeks is fine by me.

03:45:53PM 10 THE COURT: Well, to get the -- to tell me what your
11 protocol is.

12 MR. WISDOM: Oh, sure.

13 THE COURT: Then I'll check. I will give you
14 two weeks to do it.

15 MR. WISDOM: Okay.

16 MR. BURCH: Okay.

17 MR. WISDOM: That's easy.

18 THE COURT: But I don't want you to come in here
19 having done all the data and have it all wrong again.

20 MR. WISDOM: Okay. Fair enough.

21 THE COURT: I had a case where there was a defective
22 pin in a pipe; and so, the pipeline owner said, you know, they
23 have got to replace them all. And there were 486 pins in this
24 pipeline across South Texas. So, I made them come back and --
03:46:29PM 25 how many they had to dig up and test. If they found none that

1 was somewhat defective, the chance of any other being less
2 than one million is only like 19 or something. It saved a
3 bunch of money. To my knowledge, it hasn't blown up.

4 MR. BURCH: Thank you, sir.

03:46:47PM

5 (Concluded)

6 * * *

7 I certify that the foregoing is a correct transcript from the
8 record of proceedings in the above-entitled cause, to the best
9 of my ability.

10	//s_____	02/23/2011
11	Stephanie Kay Carlisle	CSR, RPR
12	Official Court Reporter	Date

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